

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Steve Doe

Title: DISPLAY DEVICE HAVING LIQUID
CRYSTAL LAYER AND SWITCHABLE
OPTICAL LAYER

Appl. No.: 10/606,131

Filing Date: 6/24/2003

Examiner: Michael H. Caley

Art Unit: 2871

Confirmation Number: 4021

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Mail Stop Patent Term Extension
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-referenced application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 475 days instead of 0 days as calculated by the United States Patent and Trademark Office (PTO).

BASIS FOR THE ADJUSTMENT

The Patent and Trademark Office's Determination of Patent Term Adjustment (PTA) shows an adjustment to date of 0 days. Our internal PTA calculation shows that this application should be entitled to an adjustment of 475 days.

In determining PTA, Applicants' delay is subtracted from the PTO delay. The PTO delay includes:

- 37 days resulting from a failure to respond to an Appeal Brief within four months (February 28, 2006 until April 6, 2006) and
- 595 days resulting from the number of days in excess of three years from the date of filing the application until the date of the filing of a request for continued examination (July 31, 2006 until March 17, 2008). The period begins July 31, 2006 instead of three years after filing (June 24, 2003) to avoid double counting of the 37 days previously accumulated.

Thus, the PTO delay should be **632** days.

Applicant's delay includes:

- 2 days resulting from a non-final office action received by the PTO two days after the three-month date for responding to an office action (March 1, 2005 until March 3, 2005),
- 28 days resulting from a notice of appeal filed 28 days after the three-month date for responding to an office action (August 17, 2005 until September 14, 2005),
- 97 days resulting from a Notice of Non-Compliant Amendment (November 10, 2006 until February 15, 2007), and

- 30 days resulting from a Request for Continued Examination (RCE) filed 30 days after the three-month date for responding to an office action (February 16, 2008 until March 17, 2008).

Thus, the Applicant's delay should be 157 days. Therefore, the PTA should be 475 days (632 days – 157 days). Even though it is common practice for the PTO not to add any PTA which has accumulated based on the 3-year rule until a patent issues, in the instant case, the 3-year time period was tolled before grant by the filing of the RCE on March 17, 2008. Therefore, any PTA in favor of the applicant which accumulated under the 3-year rule should have been noted at allowance.

The \$200.00 petition fee is being paid by credit card via EFS-web.

The present application is not subject to a terminal disclaimer.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16 1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date: June 20, 2008

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By 

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